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**UNITED STATES BANKRUPTCY COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

In re:

PG&E CORPORATION,

-and-

PACIFIC GAS & ELECTRIC COMPANY,

Debtors.

- ☐ Affects PG& Corporation  
☒ Affects Pacific Gas and Electric Company  
☐ Affects both Debtors

*\* All papers shall be filed in the Lead Case,  
No. 19-30088 (DM).*

Case No.: 19-30088-DM

Chapter 11

**DECLARATION OF RICHARD A.  
LAPPING AND REQUEST FOR JUDICIAL  
NOTICE IN SUPPORT OF MOTION FOR  
RELIEF FROM STAY BY VALERO  
REFINING COMPANY-CALIFORNIA**

Date: February 26, 2019

Time: 9:30 a.m.

Place: Courtroom 17

450 Golden Gate Avenue, 16<sup>th</sup> Floor

San Francisco, California

Judge: Hon. Dennis Montali

I, Richard A. Lapping, declare as follows:

1. I am an attorney at law, licensed to practice in the State of California and admitted to the bar of this Court. I am a partner with the firm of Trodella & Lapping LLP, attorneys for moving party Valero Refining Company-California. I make this declaration in that capacity and, if called upon to do so, I could and would testify of my own personal knowledge to the facts set forth herein.

2. This declaration ("Declaration") is submitted in support of the Motion for Relief From Stay by Valero Refining Company-California (the "Motion") and in support of this Request

1 for Judicial Notice. The Motion seeks relief to permit continuation of the litigation case of  
2 VALERO REFINING COMPANY-CALIFORNIA, a Delaware corporation v. PACIFIC GAS &  
3 ELECTRIC COMPANY, a California corporation, pending as Case No. 2:17-cv-01350-TLN-EFB in  
4 United States District Court for the Eastern District of California before the Honorable Troy L.  
5 Nunley, United States District Judge (the “District Court Action”).

6 3. Except as otherwise indicated, all statements set forth in this Declaration are based  
7 upon my personal knowledge or my review of relevant records and documents. If called upon to  
8 testify, I could and would testify competently to the facts set forth in this Declaration.

9 4. In preparing the Motion and the exhibits, I noticed that the two PG&E insurance  
10 policies obtained by Valero in discovery in the District Court Action which were to be submitted in  
11 support of the Motion contained a footer stating “CONFIDENTIAL– SUBJECT TO PROTECTIVE  
12 ORDER.” I then obtained a copy of the most recent protective order from the docket in the District  
13 Court Action. The Court is requested to take judicial notice of the Amended Stipulated Protective  
14 Order (“Protective Order”) entered in the litigation district Court Action, a true and correct copy of  
15 which is attached hereto as **Exhibit 1**.

16 5. After reviewing the Protective Order, I contacted counsel for PG&E by email on  
17 February 4, 2019, to request that PG&E waive confidentiality with respect to the insurance policies.  
18 Attached hereto as **Exhibit 2** is a true and correct copy of an email exchange between myself and  
19 counsel for PG&E Corporation on February 4 and 5, 2019, without the attachments.

20 6. I also prepared a motion to file the insurance policies under seal and to redact  
21 portions of the Motion that revealed terms of the policies. Attached hereto as **Exhibit 3** is a true and  
22 correct copy of Valero’s unfiled MOTION TO FILE REDACTED DOCUMENT AND TO FILE  
23 DOCUMENTS UNDER SEAL (“Motion to Seal”), without the exhibits.

24 7. Based on PG&E counsel’s statement on February 5, 2019 in Exhibit 2, that “As to the  
25 policies that are covered by the protective order in the Eastern District, we understand they can’t be  
26 used outside of the proceeding pending there without PG&E’s consent” and PG&E’s refusal to  
27 release Valero from the obligations under the Protective Order, I did not file the Motion to Seal out  
28 of concern that doing so would violate the Protective Order.

1           8.       After filing the Motion, I had a brief telephone conversation with Peter Benvenuti on  
2 February 12 about clearing up the matter, following which he emailed a request for an unredacted  
3 copy of Valero's Motion, which I sent to him. Attached hereto as **Exhibit 4** is a true and correct  
4 copy of an email exchange between myself and counsel for PG&E Corporation on February 12,  
5 2019, without the attachment.

6           9.       To my surprise, PG&E's preliminary response (Docket 601) to the Motion chose to  
7 disclose one of the confidential insurance policy terms redacted in Valero's Motion, the \$10 million  
8 self-insured retention. PG&E's effort to delay or derail the District Court Action is not a new  
9 position. The Court is requested to take judicial notice of the Order entered in the District Court  
10 Action on January 18, 2019, denying PG&E's Application for Temporary Stay filed on January 18,  
11 2019, a true and correct copy of which is attached hereto as **Exhibit 5**.

12           I declare under penalty of perjury under the laws of the United States of America that the  
13 foregoing information is true and correct.

14 Dated: February 24, 2019

15                               /s/ Richard A. Lapping  
16                               Richard A. Lapping

# EXHIBIT 1

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Attorneys for Defendant  
PACIFIC GAS AND ELECTRIC COMPANY

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

VALERO REFINING COMPANY --  
CALIFORNIA, a Delaware corporation,

Plaintiff,

vs.

PACIFIC GAS AND ELECTRIC COMPANY, a  
California corporation,

Defendant.

) Case No. 2:17-CV-01350-TLN-EFB

) **[PROPOSED] AMENDED STIPULATED**  
) **PROTECTIVE ORDER**

1 Plaintiff Valero Refining Company – California (“Valero”) and Defendant Pacific Gas and  
 2 Electric Company (“PG&E”) (together, the “parties”), by and through their respective counsel of  
 3 record, hereby stipulate and agree as follows:

4 **1. PURPOSES AND LIMITATIONS**

5 Disclosure and discovery activity in this action are likely to involve production of confidential,  
 6 proprietary, or private information for which special protection from public disclosure and from use  
 7 for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties  
 8 hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The  
 9 parties acknowledge that this Order does not confer blanket protections on all disclosures or responses  
 10 to discovery and that the protection it affords from public disclosure and use extends only to the  
 11 limited information or items that are entitled to confidential treatment under the applicable legal  
 12 principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated  
 13 Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 141  
 14 sets forth the procedures that must be followed and the standards that will be applied when a party  
 15 seeks permission from the court to file material under seal.

16 **2. DEFINITIONS**

17 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information  
 18 or items under this Order.

19 2.2 “CONFIDENTIAL– SUBJECT TO PROTECTIVE ORDER” Information or Items:  
 20 information (regardless of how it is generated, stored or maintained) or tangible things that qualify for  
 21 protection under Federal Rule of Civil Procedure 26(c).

22 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as  
 23 their support staff).

24 2.5 Designating Party: a Party or Non-Party that designates information or items that it  
 25 produces in disclosures or in responses to discovery as “CONFIDENTIAL– SUBJECT TO  
 26 PROTECTIVE ORDER” or “HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER.”

27 2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or  
 28

1 manner in which it is generated, stored, or maintained (including, among other things, testimony,  
2 transcripts, and tangible things), that are produced or generated in disclosures or responses to  
3 discovery in this matter.

4 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the  
5 litigation who has been retained by a Party, its counsel, or its insurer to serve as an expert witness or  
6 as a consultant in this action.

7 2.8 “HIGHLY CONFIDENTIAL– SUBJECT TO PROTECTIVE ORDER” Information or  
8 Items: extremely sensitive “Confidential – Subject to Protective Order – Information or Items,”  
9 disclosure of which to another Party or Non-Party would create a substantial risk of irreparable harm.

10 2.9 House Counsel: attorneys who are employees of a party to this action. House Counsel  
11 does not include Outside Counsel of Record or any other outside counsel.

12 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal  
13 entity not named as a Party to this action.

14 2.11 Outside Counsel of Record: attorneys who are not employees of a party to this action  
15 but are retained to represent or advise a party to this action and have appeared in this action on behalf  
16 of that party or are affiliated with a law firm which has appeared on behalf of that party.

17 2.12 Party: any party to this action, including all of its officers, directors, employees,  
18 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

19 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material  
20 in this action.

21 2.14 Professional Vendors: persons or entities that provide litigation support services (e.g.,  
22 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing,  
23 or retrieving data in any form or medium) and their employees and subcontractors.

24 2.15 Protected Material: any Disclosure or Discovery Material that is designated as  
25 “CONFIDENTIAL– SUBJECT TO PROTECTIVE ORDER,” or as “HIGHLY CONFIDENTIAL –  
26 SUBJECT TO PROTECTIVE ORDER.”

27 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
28

1 Producing Party.

2 **3. SCOPE**

3 The protections conferred by this Stipulation and Order cover not only Protected Material (as  
4 defined above), but also (1) any information copied or extracted from Protected Material; (2) all  
5 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
6 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

7 However, the protections conferred by this Stipulation and Order do not cover the following  
8 information: (a) any information that is in the public domain at the time of disclosure to a Receiving  
9 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of  
10 publication not involving a violation of this Order, including becoming part of the public record  
11 through trial or otherwise; and (b) any information known to the Receiving Party prior to the  
12 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the  
13 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of  
14 Protected Material at trial shall be governed by a separate agreement or order.

15 **4. DURATION**

16 Even after final disposition of this litigation, the confidentiality obligations imposed by this  
17 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
18 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and  
19 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion  
20 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time  
21 limits for filing any motions or applications for extension of time pursuant to applicable law.

22 **5. DESIGNATING PROTECTED MATERIAL**

23 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or  
24 Non-Party that designates information or items for protection under this Order must take care to limit  
25 any such designation to specific material that qualifies under the appropriate standards. To the extent it  
26 is practical to do so, the Designating Party must designate for protection only those parts of material,  
27 documents, items, or oral or written communications that qualify – so that other portions of the  
28 material, documents, items, or communications for which protection is not warranted are not swept



1 unjustifiably within the ambit of this Order.

2 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to  
3 be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber  
4 or retard the case development process or to impose unnecessary expenses and burdens on other  
5 parties) expose the Designating Party to sanctions.

6 If it comes to a Designating Party's attention that information or items that it designated for  
7 protection do not qualify for protection at all or do not qualify for the level of protection initially  
8 asserted, that Designating Party must promptly notify all other parties that it is withdrawing the  
9 mistaken designation.

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,  
11 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or  
12 Discovery Material that qualifies for protection under this Order must be clearly so designated before  
13 the material is disclosed or produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (e.g., paper or electronic documents, but excluding  
16 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the  
17 legend "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" or "HIGHLY CONFIDENTIAL  
18 – SUBJECT TO PROTECTIVE ORDER" to each page that contains Protected Material. If only a  
19 portion or portions of the material on a page qualifies for protection, the Producing Party also must  
20 clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and  
21 must specify, for each portion, the level of protection being asserted.

22 A Party or Non-Party that makes original documents or materials available for inspection need  
23 not designate them for protection until after the inspecting Party has indicated which material it would  
24 like copied and produced. During the inspection and before the designation, all of the material made  
25 available for inspection shall be deemed "HIGHLY CONFIDENTIAL – SUBJECT TO  
26 PROTECTIVE ORDER." After the inspecting Party has identified the documents it wants copied and  
27 produced, the Producing Party must determine which documents, or portions thereof, qualify for  
28

1 protection under this Order. Then, before producing the specified documents, the Producing Party  
2 must affix the appropriate legend (“CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” or  
3 “HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER”) to each page that contains  
4 Protected Material. If only a portion or portions of the material on a page qualifies for protection, the  
5 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
6 markings in the margins) and must specify, for each portion, the level of protection being asserted.

7 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
8 Designating Party identify on the record, before the close of the deposition, hearing, or other  
9 proceeding, all protected testimony and specify the level of protection being asserted. When it is  
10 impractical to identify separately each portion of testimony that is entitled to protection and it appears  
11 that substantial portions of the testimony may qualify for protection, the Designating Party may  
12 invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right to have  
13 up to 30 days to identify the specific portions of the testimony as to which protection is sought and to  
14 specify the level of protection being asserted. Only those portions of the testimony that are  
15 appropriately designated for protection within the 30 days shall be covered by the provisions of this  
16 Stipulated Protective Order. Alternatively, a Designating Party may specify, at the deposition or up to  
17 30 days afterwards if that period is properly invoked, that the entire transcript shall be treated as  
18 “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” or “HIGHLY CONFIDENTIAL –  
19 SUBJECT TO PROTECTIVE ORDER.”

20 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or  
21 other proceeding to include Protected Material so that the other parties can ensure that only authorized  
22 individuals who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) are  
23 present at those proceedings. The use of a document as an exhibit at a deposition shall not in any way  
24 affect its designation as “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” or “HIGHLY  
25 CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER.”

26 Transcripts containing Protected Material shall have an obvious legend on the title page that  
27 the transcript contains Protected Material, and the title page shall be followed by a list of all pages  
28

(including line numbers as appropriate) that have been designated as Protected Material and the level of protection being asserted by the Designating Party. The Designating Party shall inform the court reporter of these requirements. Any transcript that is prepared before the expiration of a 30-day period for designation shall be treated during that period as if it had been designated “HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” in its entirety unless otherwise agreed. After the expiration of that period, the transcript shall be treated only as actually designated.

(c) for information produced in some form other than documentary and for any other tangible items, the Producing Party shall affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” or “HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER.” If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s) and specify the level of protection being asserted.

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order. Upon request, the Receiving Party shall delete, destroy or return material that was inadvertently not designated appropriately under this order and the Designating Party shall reproduce those same materials with the appropriate designation.

## **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

1           6.2   Meet and Confer. The Challenging Party shall initiate the dispute resolution process by  
2 providing written notice of each designation it is challenging and describing the basis for each  
3 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite  
4 that the challenge to confidentiality is being made in accordance with this specific paragraph of the  
5 Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin the  
6 process by conferring directly (in voice to voice dialogue; other forms of communication are not  
7 sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party must  
8 explain the basis for its belief that the confidentiality designation was not proper and must give the  
9 Designating Party an opportunity to review the designated material, to reconsider the circumstances,  
10 and, if no change in designation is offered, to explain the basis for the chosen designation. A  
11 Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this  
12 meet and confer process first or establishes that the Designating Party is unwilling to participate in the  
13 meet and confer process in a timely manner.

14           6.3   Judicial Intervention. If the Parties cannot resolve a challenge without court  
15 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil  
16 Local Rule 230 within 21 days of the initial notice of challenge or within 14 days of the parties  
17 agreeing that the meet and confer process will not resolve their dispute, whichever is earlier. Each  
18 such motion must be accompanied by a competent declaration affirming that the movant has complied  
19 with the meet and confer requirements imposed in the preceding paragraph. Failure by the Designating  
20 Party to make such a motion including the required declaration within 21 days (or 14 days, if  
21 applicable) shall automatically waive the confidentiality designation for each challenged designation.  
22 In addition, the Challenging Party may file a motion challenging a confidentiality designation at any  
23 time if there is good cause for doing so, including a challenge to the designation of a deposition  
24 transcript or any portions thereof. Any motion brought pursuant to this provision must be  
25 accompanied by a competent declaration affirming that the movant has complied with the meet and  
26 confer requirements imposed by the preceding paragraph.

27           The burden of persuasion in any such challenge proceeding shall be on the Designating Party.  
28

Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality designation by failing to file a motion to retain confidentiality as described above, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the court rules on the challenge.

## **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" Information or Items or "HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" or "HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" only to:

(a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the

1 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

2 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably  
3 necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”  
4 (Exhibit A);

5 (d) the court and its personnel;

6 (e) court reporters and their staff, professional jury or trial consultants, and Professional  
7 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the  
8 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

9 (f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary  
10 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless  
11 otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition  
12 testimony or exhibits to depositions that reveal Protected Material must be separately bound by the  
13 court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective  
14 Order;

15 (g) the author or recipient of a document containing the information or a custodian or other  
16 person who otherwise possessed or knew the information;

17 (h) any insurer or insurance counsel of Receiving Party and any Expert (as defined in this  
18 Order) of the Receiving Party’s insurer or insurance counsel to whom disclosure is reasonably  
19 necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”  
20 (Exhibit A).

21 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**  
22 **OTHER LITIGATION**

23 If a Party is served with a subpoena or a court order issued in other litigation that compels  
24 disclosure of any information or items designated in this action as “CONFIDENTIAL – SUBJECT  
25 TO PROTECTIVE ORDER” or “HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE  
26 ORDER” that Party must:

27 (a) promptly notify in writing the Designating Party. Such notification shall include a copy of  
28 the subpoena or court order;

1 (b) promptly notify in writing the party who caused the subpoena or order to issue in the other  
2 litigation that some or all of the material covered by the subpoena or order is subject to this Protective  
3 Order. Such notification shall include a copy of this Stipulated Protective Order; and

4 (c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating  
5 Party whose Protected Material may be affected.

6 If the Designating Party timely seeks a protective order, the Party served with the subpoena or  
7 court order shall not produce any information designated in this action as “CONFIDENTIAL –  
8 SUBJECT TO PROTECTIVE ORDER” or “HIGHLY CONFIDENTIAL – SUBJECT TO  
9 PROTECTIVE ORDER” before a determination by the court from which the subpoena or order  
10 issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall  
11 bear the burden and expense of seeking protection in that court of its confidential material – and  
12 nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in  
13 this action to disobey a lawful directive from another court.

14 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**  
15 **THIS LITIGATION**

16 (a) The terms of this Order are applicable to information produced by a Non-Party in this  
17 action and designated as “CONFIDENTIAL– SUBJECT TO PROTECTIVE ORDER” or “HIGHLY  
18 CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER.” Such information produced by Non-  
19 Parties in connection with this litigation is protected by the remedies and relief provided by this Order.  
20 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional  
21 protections.

22 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-  
23 Party’s confidential information in its possession, and the Party is subject to an agreement with the  
24 Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

25 1. promptly notify in writing the Requesting Party and the Non-Party that some or  
26 all of the information requested is subject to a confidentiality agreement with a Non-Party;

27 2. promptly provide the Non-Party with a copy of the Stipulated Protective Order  
28 in this litigation, the relevant discovery request(s), and a reasonably specific description of the



1 information requested; and

2 3. make the information requested available for inspection by the Non-Party.

3 (c) If the Non-Party fails to object or seek a protective order from this court within 14 days  
4 of receiving the notice and accompanying information, the Receiving Party may produce the Non-  
5 Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a  
6 protective order, the Receiving Party shall not produce any information in its possession or control  
7 that is subject to the confidentiality agreement with the Non-Party before a determination by the court.  
8 Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking  
9 protection in this court of its Protected Material.

10 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

11 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
12 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,  
13 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized  
14 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)  
15 inform the person or persons to whom unauthorized disclosures were made of all the terms of this  
16 Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be  
17 Bound" that is attached hereto as Exhibit A.

18 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
19 **PROTECTED MATERIAL**

20 (a) Non-Waiver of Protection

21 Pursuant to Fed. R. Evid. 502(d), any party's production of documents covered by an  
22 applicable privilege or protection shall not constitute a waiver of the privilege or protection with  
23 respect to those documents or the subject matter of those documents in this case or any other federal or  
24 state proceeding. Nothing in this paragraph shall require a party to produce documents that are  
25 protected from disclosure. This paragraph shall be interpreted to provide the greatest protection  
26 allowed by Federal Rule of Evidence 502, or otherwise permitted by law.

27 Nothing herein is intended to or shall serve to limit a party's right to conduct a review of  
28 documents, ESI or information (including metadata) for relevance, responsiveness and/or segregation



1 of privileged and/or protected information before production.

2 (b) "Clawback" of Documents

3 Any party that inadvertently discloses or produces a document or ESI that it considers  
4 privileged or otherwise protected from discovery will promptly give written notice to the Receiving  
5 Party, identifying the document or ESI in question, the asserted privilege or protection, and the  
6 grounds therefor. Any party that receives a document that is clearly privileged shall promptly give  
7 written notice to the Producing Party and identify the document(s) which appear to be privileged.

8 Upon receipt of notice of the assertion of privilege or protection over produced documents or  
9 ESI, the Receiving Party will act in accordance with Federal Rule of Civil Procedure 26(b)(5)(B),  
10 including:

11 (1) to whatever extent it contests the assertion of privilege or protection, promptly so  
12 notify the Producing Party, and sequester and refrain from using or disclosing the contested  
13 documents and ESI pending resolution of the contest by the parties or the Court; and

14 (2) to whatever extent the Receiving Party does not contest the assertion of privilege or  
15 protection, promptly return or destroy the applicable document(s) and/or ESI, take reasonable steps to  
16 identify and destroy each copy thereof and all information derived therefrom (normally reasonable  
17 diligence will not include disaster recovery media), and promptly certify in writing to the Producing  
18 Party that it has done so.

19 In the event of a contested assertion of privilege or protection over produced documents that  
20 cannot be resolved amicably after meeting and conferring in good faith, either party may bring the  
21 contest to the attention of the Court by motion. The Producing Party must preserve the contested  
22 information until the claim is resolved.

23 **12. MISCELLANEOUS**

24 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek  
25 its modification by the court in the future.

26 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no  
27 Party waives any right it otherwise would have to object to disclosing or producing any information or  
28

1 item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any  
2 right to object on any ground to use in evidence of any of the material covered by this Protective  
3 Order.

4 12.3 Filing Protected Material. Without written permission from the Designating Party or a  
5 court order secured after appropriate notice to all interested persons, a Party may not file in the public  
6 record in this action any Protected Material. A Party that seeks to file under seal any Protected  
7 Material must comply with Civil Local Rule 141. Protected Material may only be filed under seal  
8 pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to  
9 Civil Local Rule 141, a sealing order will issue only upon a request establishing that the Protected  
10 Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under  
11 the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local  
12 Rule 141 is denied by the court, then the Receiving Party may file the Protected Material in the public  
13 record unless otherwise instructed by the court.

14 **13. FINAL DISPOSITION**

15 Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
16 Receiving Party must return all Protected Material to the Producing Party or destroy such material. As  
17 used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,  
18 summaries, and any other format reproducing or capturing any of the Protected Material. Whether the  
19 Protected Material is returned or destroyed, the Receiving Party must submit a written certification to  
20 the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day  
21 deadline that (1) identifies (by category, where appropriate) all the Protected Material that was  
22 returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts,  
23 compilations, summaries or any other format reproducing or capturing any of the Protected Material.  
24 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion  
25 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and  
26 trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if  
27 such materials contain Protected Material. Any such archival copies that contain or constitute  
28

1 Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

2  
3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

4 DATED: February 7, 2018

/s/ Alexander Bukac (as  
authorized on February 7, 2018)

6 NATHAN R. JASKOWIAK  
ALEXANDER J. BUKAC  
7 KEESAL, YOUNG & LOGAN  
Attorneys for Plaintiff  
8 VALERO REFINING COMPANY –  
CALIFORNIA

9 MIKAL C. WATTS  
FRANCISCO GUERRA IV  
10 MARK A. FASSOLD  
WATTS GUERRA, L.L.P.  
11 Attorneys for Plaintiff  
12 VALERO REFINING COMPANY –  
CALIFORNIA

13  
14  
15  
16 DATED: February 7, 2018

/s/ Laurie Edelstein  
17 LAURIE EDELSTEIN  
18 SARAH K. JACKEL  
MICHAEL DOCKTERMAN  
19 STEPTOE & JOHNSON LLP  
Attorneys for Defendant  
20 PACIFIC GAS & ELECTRIC COMPANY

21  
22  
23 PURSUANT TO STIPULATION, IT IS SO ORDERED.

24 DATED: February 7, 2018.

  
25 HONORABLE EDMUND F. BRENNAN  
26 UNITED STATES MAGISTRATE JUDGE  
27  
28

**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Eastern District of California on February \_\_, 2018 in the case of *Valero Refining Company – California v. Pacific Gas & Electric Company*, No. 17 Civ. 1350 (TLN)(EFB). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Eastern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of \_\_\_\_\_ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_  
[printed name]

Signature: \_\_\_\_\_  
[signature]

**From:** [caed\\_cmecf\\_helpdesk@caed.uscourts.gov](mailto:caed_cmecf_helpdesk@caed.uscourts.gov)  
**To:** [CourtMail@caed.uscourts.dcn](mailto:CourtMail@caed.uscourts.dcn)  
**Subject:** Activity in Case 2:17-cv-01350-TLN-EFB Valero Refining Company California v. Pacific Gas & Electric Company Stipulation and Order.  
**Date:** Thursday, February 08, 2018 9:55:45 AM

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**U.S. District Court**

**Eastern District of California - Live System**

**Notice of Electronic Filing**

The following transaction was entered on 2/8/2018 at 9:54 AM PST and filed on 2/8/2018

**Case Name:** Valero Refining Company California v. Pacific Gas & Electric Company

**Case Number:** [2:17-cv-01350-TLN-EFB](#)

**Filer:**

**Document Number:** [31](#)

**Docket Text:**

**AMENDED STIPULATED PROTECTIVE ORDER signed by Magistrate Judge Edmund F. Brennan on 2/7/2018. (Becknal, R)**

**2:17-cv-01350-TLN-EFB Notice has been electronically mailed to:**

Alexander James Bukac    [alexander.bukac@kyl.com](mailto:alexander.bukac@kyl.com), [maricel.schilt@kyl.com](mailto:maricel.schilt@kyl.com)

Francisco Guerra, IV , PHV    [fguerra@wattsguerra.com](mailto:fguerra@wattsguerra.com), [khays@wattsguerra.com](mailto:khays@wattsguerra.com)

John Cox    [john.cox@kyl.com](mailto:john.cox@kyl.com), [maricel.schilt@kyl.com](mailto:maricel.schilt@kyl.com)

Laura Joy Edelstein    [ledelstein@steptoe.com](mailto:ledelstein@steptoe.com), [sbutler@steptoe.com](mailto:sbutler@steptoe.com)

Mark Fassold , PHV    [mfassold@wattsguerra.com](mailto:mfassold@wattsguerra.com), [khays@wattsguerra.com](mailto:khays@wattsguerra.com)

Michael Dockterman , PHV    [mdockterman@steptoe.com](mailto:mdockterman@steptoe.com)

Mikal C. Watts , PHV    [mchwatts@wattsguerra.com](mailto:mchwatts@wattsguerra.com), [khays@wattsguerra.com](mailto:khays@wattsguerra.com)

Nathan Randall Jaskowiak    [nathan.jaskowiak@kyl.com](mailto:nathan.jaskowiak@kyl.com), [lori.carmichael@kyl.com](mailto:lori.carmichael@kyl.com),  
[maricel.schilt@kyl.com](mailto:maricel.schilt@kyl.com)

Sarah Katherine Jackel    [sjackel@steptoe.com](mailto:sjackel@steptoe.com)

**2:17-cv-01350-TLN-EFB Electronically filed documents must be served conventionally by the filer to:**

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1064943537 [Date=2/8/2018] [FileNumber=9206284-0]  
[7f231dbccf173d2342486f60677b9f5e0e2c6d150c93f782ed6daffc2c09872bf8bd  
f19601d1b63b537cec2a15e9d379d6defdc1b21d5a1c9e91fdaf25399be1]]

## **EXHIBIT 2**

## Richard Lapping

---

**From:** Tobias Keller <tkeller@kellerbenvenutti.com>  
**Sent:** Tuesday, February 5, 2019 5:24 PM  
**To:** Richard Lapping  
**Cc:** Peter Benvenutti; Tran, An; Tsekerides, Theodore  
**Subject:** RE: PG&E - Valero litigation - time sensitive

Rich:

We were able to convene a group familiar with the litigation this afternoon but won't be able to get you any meaningful agreements tonight. The debtors won't stipulate to relief from stay, at least for the foreseeable future.

As to the policies that are covered by the protective order in the Eastern District, we understand they can't be used outside of the proceeding pending there without PG&E's consent. With our colleagues at Weil, copied here, we're authorized to work with you to get the publicly-filed version of your motion in a form that we can agree doesn't disclose confidential information that is protected by the protective order, but we will need to clear that with the insurers among others. That will take a couple of days.

I understand your clients are anxious to file, but we're hopeful they'll take a little extra time to make sure we're on the same page as to the disclosures regarding confidential information.

If not, they're stuck with the protective order as it is. We're not in a position to release them from those obligations on such short notice and with the limited information we have at hand.

With best regards,

Tobias S. Keller, Esq.  
Direct: (415) 796-0709  
Email: tkeller@kellerbenvenutti.com

---

**From:** Richard Lapping <rich@trodelalapping.com>  
**Sent:** Tuesday, February 5, 2019 3:13 PM  
**To:** Tobias Keller <tkeller@kellerbenvenutti.com>  
**Subject:** RE: PG&E - Valero litigation - time sensitive

Toby,

I need to catch a plane at noon tomorrow. Can someone get to me today?

Otherwise, I can file the policies under seal and redact discussion in the motion, and PG&E can decide whether it wants to keep the confidential designation by filing something with Judge Montali under District Court Local Rule 79-5(e), which appears to contemplate this situation.

Rich Lapping





## TRODELLA & LAPPING LLP

540 Pacific Ave • San Francisco, CA 94133  
Direct: 415.399.1015 • Mobile: 415.200.9407 • rich@trodelalapping.com

[www.trodelalapping.com](http://www.trodelalapping.com)

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**From:** Richard Lapping  
**Sent:** Tuesday, February 5, 2019 11:47 AM  
**To:** 'Tobias Keller' <[tkeller@kellerbenvenuti.com](mailto:tkeller@kellerbenvenuti.com)>  
**Subject:** RE: PG&E - Valero litigation - time sensitive

Toby,

Thanks. If anyone needs to call me, please use my cell – 415-200-9407.

Rich Lapping



## TRODELLA & LAPPING LLP

540 Pacific Ave • San Francisco, CA 94133  
Direct: 415.399.1015 • Mobile: 415.200.9407 • rich@trodelalapping.com

[www.trodelalapping.com](http://www.trodelalapping.com)

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---

**From:** Tobias Keller <[tkeller@kellerbenvenuti.com](mailto:tkeller@kellerbenvenuti.com)>  
**Sent:** Tuesday, February 5, 2019 11:44 AM  
**To:** Richard Lapping <[rich@trodelalapping.com](mailto:rich@trodelalapping.com)>  
**Subject:** RE: PG&E - Valero litigation - time sensitive

Rich:

Finally got to the right folks at PG&E. Should have something for you later this evening or tomorrow.

Tobias S. Keller, Esq.  
Direct: (415) 796-0709  
Email: [tkeller@kellerbenvenuti.com](mailto:tkeller@kellerbenvenuti.com)

---

**From:** Richard Lapping <[rich@trodelalapping.com](mailto:rich@trodelalapping.com)>  
**Sent:** Monday, February 4, 2019 12:01 PM  
**To:** Tobias Keller <[tkeller@kellerbenvenuti.com](mailto:tkeller@kellerbenvenuti.com)>; Peter Benvenuti <[pbenvenuti@kellerbenvenuti.com](mailto:pbenvenuti@kellerbenvenuti.com)>; Jane Kim

<[jkim@kellerbenvenuti.com](mailto:jkim@kellerbenvenuti.com)>

**Subject:** PG&E - Valero litigation - time sensitive

Toby, Peter, Jane:

My client, Valero Refining Company-California, is the plaintiff in an action against PG&E – the utility – in district court in Sacramento. We are filing this week a motion for relief from stay to allow completion of that litigation, which was in the final stages with a June trial date.

Part of what we will say in the motion has to do with PG&E's insurance coverage for the Valero claim under claims made policies issued for the period August 1, 2016 to August 1, 2017. At a minimum, we would disclose the amount of the per occurrence limits, the amount of the underlying SIR, the policy period, and the text of the clause that provides that bankruptcy of the insured does not excuse coverage.

However, there is a protective order in the district court case and the policies, which we would ordinarily attach as exhibits, were designated "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" when they were produced in discovery to Valero. I attach a copy of the stipulated protective order. It would seem that such a designation no longer applies given the disclosure obligations in bankruptcy and the materiality of the terms of these policies. In any event, we are not sure what aspect of the insurance coverage PG&E wants to keep out of public filings at this point.

Please consult with your team and let me know if PG&E will waive confidentiality with respect to these policies. If not, whether PG&E objects to disclosure of the matters above. Failing that, we will file the policies under seal in the bankruptcy case. The protective order does not address or contemplate PG&E's bankruptcy, so we see no problem with doing that.

We intend to file our motion no later than Wednesday morning, February 6, so if we don't hear back, we'll file under seal and redact as appropriate in our papers.

Additionally, is there any chance that PG&E will stipulate to relief from stay?

Rich Lapping



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## **EXHIBIT 3**

Richard A. Lapping (SBN: 107496)  
Trodella & Lapping LLP  
540 Pacific Avenue  
San Francisco, CA 94133  
Telephone: (415) 399-1015  
Facsimile: (415) 651-9004  
*Rich@TrodellaLapping.com*

Attorneys for Valero Refining Company-California

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

In re:

PG&E CORPORATION,

-and-

PACIFIC GAS & ELECTRIC COMPANY,

Debtors.

- ☐ Affects PG&E Corporation  
☒ Affects Pacific Gas and Electric Company  
☐ Affects both Debtors

*\* All papers shall be filed in the Lead Case,  
No. 19-30088 (DM).*

Case No.: 19-30088-DM

Chapter 11

**MOTION TO FILE REDACTED  
DOCUMENT AND TO FILE DOCUMENTS  
UNDER SEAL; DECLARATION OF  
RICHARD A. LAPPING**

Date: February 26, 2019

Time: 9:30 a.m.

Place: Courtroom 17

450 Golden Gate Avenue, 16<sup>th</sup> Floor

San Francisco, California

Judge: Hon. Dennis Montali

TO THE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Creditor Valero Refining Company-California (“Valero”) hereby submits this motion (“Seal Motion”) pursuant to Bankruptcy Code § 107(b), 11 U.S.C., Federal Rule of Bankruptcy Procedure 9018, the Court’s *New District Wide Procedures for Electronically Filing Sealed and Redacted Documents*, and District Court Local Rule 79-5, made applicable by Bankruptcy Local Rule 1001-2(a), for entry of an order granting or denying the redaction and sealing of documents as described in this Seal Motion and the Declaration of Richard A. Lapping (the “Declaration”).

As set forth in the Declaration, Valero received in discovery copies of two insurance policies

1 (“Policies”) of Pacific Gas & Electric Company (“PG&E”) in the litigation case of VALERO  
2 REFINING COMPANY-CALIFORNIA, a Delaware corporation v. PACIFIC GAS & ELECTRIC  
3 COMPANY, a California corporation, pending as Case No. 2:17-cv-01350-TLN-EFB in United  
4 States District Court for the Eastern District of California before the Honorable Troy L. Nunley,  
5 United States District Judge (the “District Court Action”).

6 A stipulated protective order was entered in the District Court Action that permitted the  
7 parties to designate documents produced in discovery as “CONFIDENTIAL– SUBJECT TO  
8 PROTECTIVE ORDER.” PG&E placed that designation on the Policies when produced.

9 Concurrently with this Seal Motion, Valero has filed a Motion for Relief from Stay (the  
10 “Stay Motion”) to permit it to conclude the District Court Action. The Stay Motion is supported by  
11 the Declaration of John Cox (“Cox Declaration”). In the Stay Motion, Valero discusses certain  
12 terms and conditions of the Policies as they pertain to Valero’s request for relief from stay. Those  
13 provisions are redacted in the Stay Motion as filed, and are subject to the Seal Motion’s request to  
14 rule on the redactions. The Policies are or would be attached as Exhibits 3 and 4 to the Cox  
15 Declaration.

16 Valero does not believe that the Policies or the contents thereof, were appropriately  
17 designated as confidential under the protective order in the District Action, or if they were, that they  
18 remain commercially confidential in the context of this bankruptcy case within the meaning of  
19 Bankruptcy Code § 107(b). Nonetheless, Valero remains subject to the District Court’s protective  
20 order and PG&E’s designation thereunder, and thus brings this Seal Motion under District Court  
21 Rule 79-5(e), which provides:

22 **Documents Designated as Confidential or Subject to a Protective**  
23 **Order.** If the Submitting Party is seeking to file under seal a document  
24 designated as confidential by the opposing party or a non-party  
25 pursuant to a protective order, or a document containing information  
26 so designated by an opposing party or a non-party, the Submitting  
27 Party's declaration in support of the Administrative Motion to File  
28 Under Seal must identify the document or portions thereof which

1 contain the designated confidential material and identify the party that  
2 has designated the material as confidential ("the Designating Party").  
3 The declaration must be served on the Designating Party on the same  
4 day it is filed and a proof of such service must also be filed.

5 (1) Within 4 days of the filing of the Administrative  
6 Motion to File Under Seal, the Designating Party must  
7 file a declaration as required by subsection 79-  
8 5(d)(1)(A) establishing that all of the designated  
9 material is sealable.

10 (2) If the Designating Party does not file a responsive  
11 declaration as required by subsection 79-5(e)(1) and the  
12 Administrative Motion to File Under Seal is denied, the  
13 Submitting Party may file the document in the public  
14 record no earlier than 4 days, and no later than 10 days,  
15 after the motion is denied. A Judge may delay the  
16 public docketing of the document upon a showing of  
17 good cause.

18 As the Submitting Party under the foregoing local rule, Valero will, simultaneously with  
19 filing the Seal Motion, serve PG&E as the Submitting Party with this Seal Motion and, by email to  
20 its attorneys of record, a copy of the chambers copy of the Stay Motion that highlights the redacted  
21 information, as well as copies of the Policies.

22 Dated: February 5, 2019

TRODELLA & LAPPING LLP

23  
24 By: /s/ Richard A. Lapping  
25 Richard A. Lapping  
Attorneys for Valero Refining Company-  
California

26 **DECLARATION OF RICHARD A. LAPPING**

27 I, Richard A. Lapping, declare as follows:

28 1 I am an attorney at law, licensed to practice in the State of California and admitted to

1 the bar of this Court. I am a partner with the firm of Trodella & Lapping LLP, attorneys for moving  
2 party Valero Refining Company-California. I make this declaration in that capacity and, if called  
3 upon to do so, I could and would testify of my own personal knowledge to the facts set forth herein.

4 2. This declaration ("Declaration") is submitted in support of Valero's Motion To File  
5 Redacted Document And To File Documents Under Seal.

6 3. Except as otherwise indicated, all statements set forth in this Declaration are based  
7 upon my personal knowledge or my review of relevant records and documents. If called upon to  
8 testify, I could and would testify competently to the facts set forth in this Declaration.

9 5. Attached hereto as Exhibit 1 is a true and correct copy the Amended Stipulated  
10 Protective Order entered in the District Court Action. Exhibit 1 will be filed in the public record of  
11 this case.

12 4. Attached hereto as Exhibit 2 is a copy of the unredacted version of Valero's Motion  
13 for Relief from Stay, highlighted to indicate proposed redactions. Exhibit 2 is not filed in the public  
14 record of this case.

15 5. Attached hereto as Exhibits 3 and 4 are true and correct copies of the Policies that are  
16 the proposed documents filed under seal. I am informed, based on the Declaration of John Cox, that  
17 Exhibits 3 and 4 were produced and designated as confidential by PG&E in discovery in the District  
18 Court Action. Exhibits 3 and 4 are not filed in the public record of this case.

19 I declare under penalty of perjury under the laws of the United States of America that the  
20 foregoing information is true and correct.

21 Dated: February 5, 2019

22 /s/ Richard A. Lapping

23 Richard A. Lapping  
24  
25  
26  
27  
28

## **EXHIBIT 4**



## Richard Lapping

---

**From:** Tobias Keller <tkeller@kellerbenvenutti.com>  
**Sent:** Tuesday, February 12, 2019 5:00 PM  
**To:** Richard Lapping; Peter Benvenutti  
**Subject:** RE: PG&E - Valero

Received. Thank you.

Tobias S. Keller, Esq.  
Direct: (415) 796-0709  
Email: tkeller@kellerbenvenutti.com

---

**From:** Richard Lapping <rich@trodelalapping.com>  
**Sent:** Tuesday, February 12, 2019 4:45 PM  
**To:** Peter Benvenutti <pbenvenutti@kellerbenvenutti.com>  
**Cc:** Tobias Keller <tkeller@kellerbenvenutti.com>  
**Subject:** RE: PG&E - Valero

Gentlemen,

Here it is, with redactions highlighted in yellow.

Rich Lapping



TRODELLA & LAPPING LLP

540 Pacific Ave • San Francisco, CA 94133  
Direct: 415.399.1015 • Mobile: 415.200.9407 • rich@trodelalapping.com

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**From:** Peter Benvenutti <[pbenvenutti@kellerbenvenutti.com](mailto:pbenvenutti@kellerbenvenutti.com)>  
**Sent:** Tuesday, February 12, 2019 2:05 PM  
**To:** Richard Lapping <[rich@trodelalapping.com](mailto:rich@trodelalapping.com)>  
**Cc:** Tobias Keller <[tkeller@kellerbenvenutti.com](mailto:tkeller@kellerbenvenutti.com)>  
**Subject:** PG&E - Valero

Rich, could you send us an unredacted copy of the Valero stay relief motion?

Thanks.

Peter

Peter J. Benvenutti  
Keller & Benvenutti LLP  
650 California Street, Suite 1900  
San Francisco, CA 94108  
Direct: 415.364.6798  
Cell: 415.722.4299  
Fax: 650.636.9251  
Email: [pbenvenutti@kellerbenvenutti.com](mailto:pbenvenutti@kellerbenvenutti.com)  
Web: <http://www.kellerbenvenutti.com>



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## **EXHIBIT 5**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

VALERO REFINING COMPANY—  
CALIFORNIA, a Delaware corporation,

Plaintiff,

v.

PACIFIC GAS AND ELECTRIC  
COMPANY, a California corporation,

Defendant.

No. 2:17-cv-01350-TLN-EFB

**ORDER**

On January 18, 2019, Defendant Pacific Gas and Electric Company (“Defendant” or “PG&E”) filed an Application for Temporary Stay. (ECF No. 46.) On January 21, 2019, Plaintiff Valero Refining Company (“Plaintiff”) filed an Opposition thereto. (ECF No. 47.) The Court has reviewed the parties’ briefs, and for the reasons provided below, Defendant’s Application is DENIED.

Defendant seeks a temporary stay in this matter pending its anticipated Chapter 11 bankruptcy filing. Indeed, PG&E has announced its intent to file for Chapter 11 protection “on or about January 29, 2019.” (Pl.’s App., ECF No. 46, at 2.) Under 11 U.S.C. § 362, once PG&E files for such protection, all litigation against PG&E will automatically be stayed, including the present action. Defendant seeks a temporary stay in this matter—to last thirty (30) days or until it files for bankruptcy—in order to “preserve [its] assets” pending that automatic stay. (*Id.*)

1 Defendant indicates—and Plaintiff agrees—that the parties are in the middle of briefing on  
2 Defendant’s Motion for Summary Judgment, and that depositions of two of PG&E’s experts are  
3 scheduled for the end of January. Defendant seeks to temporarily stay the action so it does not  
4 expend resources on these matters in the interim.

5 The Court has broad discretion in deciding whether to issue a stay. “[T]he power to stay  
6 proceedings is incidental to the power inherent in every court to control the disposition of the  
7 causes on its docket . . . . [This] calls for the exercise of judgment, which must weigh competing  
8 interests and maintain an even balance.”<sup>1</sup> *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936).  
9 Exercising that discretion, the Court is not convinced that a stay is necessary or proper in this  
10 case.

11 First, PG&E filed its motion for summary judgment (ECF No. 44) before even requesting  
12 this stay. The vast majority of resources it would need to dedicate to that filing have therefore  
13 already been expended, and any “assets” it might use to review Plaintiff’s opposition and prepare  
14 an optional reply are minimal. The same is true of defending the upcoming depositions.  
15 Defendant’s interest in preserving the limited resources it will take to defend two depositions  
16 does not outweigh Plaintiff’s interest in pursuing litigation unless and until the automatic stay  
17 takes effect. Indeed, PG&E may still opt not to file for Chapter 11 bankruptcy, in which case  
18 Plaintiff would be stuck with an unjustified thirty-day stay.

19 Additionally, Plaintiff’s arguments that a stay imposed by this Court would act as a  
20 premature protection to a debtor and set a dangerous precedent are well taken. (*See* ECF No. 47  
21 at 3-4.) This Court is not a bankruptcy court, and Defendant is not entitled to a premature stay of  
22 proceedings unless and until it actually files for the protections afforded under Chapter 11.

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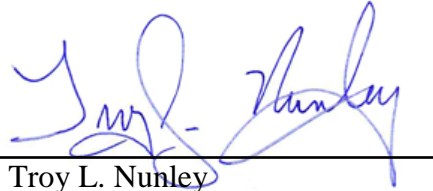
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26 <sup>1</sup> The Court rejects Plaintiff’s position that the requested stay is governed by a preliminary injunction  
27 standard. (*See* ECF No. 47 at 3.) *Solidus Networks, Inc. v. Excel Innovations, Inc. (In re Excel Innovations, Inc.)*,  
28 502 F.3d 1086, 1094 (9th Cir. 2007) applied a preliminary injunction standard where a Chapter 11 debtor sought to  
stay a proceeding in which the debtor was not a party. Here, the Plaintiff—who happens to be a *potential* debtor—is  
seeking to stay a proceeding in which it is a party.

1 For the reasons provided above, Defendant's Application for Temporary Stay (ECF No.  
2 46) is DENIED.

3 IT IS SO ORDERED.

4 Dated: January 28, 2019

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7 

Troy L. Nunley  
United States District Judge